

In re Appln. of Savicki, Alan F.  
Application No. 10/049,319

### Remarks

The Office Action indicated that the amendment to the claims filed on June 12, 2004 does not comply with the requirements of 37 C.F.R. 1.121(c) because it utilizes the identifier "(Previously amended)". By this response Applicant has corrected the identifier "(Previously amended)" to read - - (Previously presented) - - as suggested by the Examiner. Reconsideration and reexamination of the outstanding rejection of claims 1-17 is respectfully requested in view of this amendment and the following remarks. Claims 1-17 remain in this case. Claims 1, 3, 4, 16 and 17 have been amended. No new matter has been added by way of these amendments. Applicant believes that the application is now in condition for allowance. Accordingly, favorable reconsideration in light of the following remarks is respectfully requested.

### *Claim Objections*

Claims 3-8 were objected to on informal grounds. The examiner noted that the term "the first flange portion" in each claim lacks clear antecedent basis since it could refer to either the "upper" or "altered" flange of claim 1. In response, claims 3 and 4 have been amended to recite that the separator engages inwardly most extending portions of the second length of the first flange portion. Claim 1 as amended recites that the first altered portion is "of a reduced inward extension." No new matter has been added by these amendments. In view of these amendments it is believed that the objection to claims 3-8 is now overcome.

### *Summary of the Claim Rejections*

Claims 1-10, 13, 14, 16 and 17 stand rejected under 35 U.S.C. 102(b) as being anticipated by Stolmeier et al. (US 5871281). Claims 11 and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 5871281) in view of Porchia et al. (US 5664299). Claim 15 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 5871281) in view of Herrington et al. (US 5007143).

### *Discussion of the Claim Rejections*

Applicants respectfully submit that Stolmeier is insufficient to anticipate or even render obvious claim 1. To render a claim unpatentable as anticipated, the prior art reference must teach each and every element of the claim. See, e.g., M.P.E.P. § 2131. Moreover, to render a claim obvious, the prior art reference as modified must teach or suggest all the elements of the claim. See, e.g., M.P.E.P. § 2143. Stolmeier, however, does not teach the feature as recited in amended claims 1, 16 and 17 that the first length of the first upper flange portion is of a constant length along the longitudinal x axis of said first fastening strip.

In the closure device of Stolmeier the upper flange portion of each fastening strip is notched in a

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manner that removes substantially all the material of the upper flanges above the closure elements, including both the upwardly extending first length portion and inwardly extending second length portion of the respective upper flange portions. As is seen in Figs. 7 and 11 of Stolmeier et al. '281, the separator has a wide point that extends well beyond the normal occluded position of the vertically upright length portions of the upper flanges. Thus, without the provision of the notch in both the vertically upwardly extending first length portion and inwardly extending second length portion of the respective upper flange portions, the separator would still act to deocclude the fastening strips.

Claims dependent upon a claim that is not anticipated by a reference cannot be rejected under 35 U.S.C. § 102(b) and claims dependent upon a claim that is not obvious cannot be rejected under 35 U.S.C. § 103. See, e.g., *RCA Corp. v. Applied Digital Data Systems*, 221 U.S.P.Q.2d 385 (Fed. Cir. 1984); *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Since none of the cited references render independent claim 1 anticipated or obvious, dependent claims 2-15 are likewise patentable.

#### Fee Authorization

It is believed that a one-month petition for extension of time is still applicable to applicant's un-entered response filed May 13, 2004. The Examiner is authorized to charge a one-month extension fee of \$110.00 to Deposit Account 032270.

#### Conclusion


The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Finally, while no fees are due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment associated with this communication to Deposit Account No. 03 2270.

Respectfully submitted,

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